UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

RGIS, LLC,	)	
	)	
Petitioner/Cross-Respondent	)	
	)	No. 16-60129
	)	
	)	
NATIONAL LABOR RELATIONS BOARD	)	
	)	
Respondent/Cross-Petitioner	)	

PETITIONER/CROSS-RESPONDENT RGIS, LLC'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY DECISION

The NLRB fails to provide any good reason why this Court should not grant RGIS's motion for summary decision. The NLRB does not, and cannot, dispute that the law of this Circuit is well settled after thorough and repeated consideration by this Court. *See 24 Hour Fitness USA, Inc. v. NLRB*, No. 16-60005 (June 27, 2016) (per curiam) (order granting summary disposition); *PJ Cheese, Inc. v. NLRB*, No. 15-60610 (5th Cir. June 16, 2016) (order granting summary decision, citing *D.R. Horton*, *Murphy Oil*, and *Chesapeake Energy*); *On Assignment Staffing Services, Inc. v. NLRB*, Case No. 15-60642 (5th Cir. June 6, 2016) (per curiam) (order granting summary decision); *Chesapeake Energy Corp. v. N.L.R.B.*, 633 Fed. App'x 613, 2016 WL

573705 (5th Cir. Feb. 12, 2016) (per curiam); *Murphy Oil USA, Inc. v. N.L.R.B.*, 808 F.3d 1013 (5th Cir. 2015); *D.R. Horton v. N.L.R.B.*, 737 F.3d 344 (5th Cir. 2013).

The only argument the NLRB presents against summary decision is that it *might* petition the Supreme Court for a writ of certiorari in *Murphy Oil*, which the Supreme Court *might* grant and which *might* at some distant undefined point affect the settled law of this Circuit. *See* Opp'n of NLRB to Motion for Summary Decision ("Opp'n") ¶¶ 4 & 6. But speculation that the law might someday change could be made in every litigation to attempt to forestall an inevitable outcome. It is not a sufficient reason to defer a decision now based on the law as it exists.

It is also significant that the NLRB has not stayed its own pipeline of decisions holding – in non-acquiesce with this Court's decisions in *D.R. Horton, Murphy Oil*, and their progeny and contrary to the scores of similar decisions in other jurisdictions – that employers' maintenance of individual arbitration agreements consistent with the FAA constitute unfair labor practices under the NLRA. To the contrary, the NLRB acknowledges that it continues to

issues these decisions in significant numbers. *See* Opp'n ¶ 3 (noting that the NLRB has issued 70 decisions "like this one"). If the Board wishes to avoid summary decisions based on *D.R. Horton* and *Murphy Oil*, it could simply stay its own proceedings until, if ever, the law changes. Indeed, to avoid burdening courts and the scores of employers who must defend cases "like this one," it would make more sense for the NLRB *to stay its own decisions* while it decides whether it will petition the Supreme Court and, if it does, until the Supreme Court acts on its petition. The NLRB has not shown any inclination to do that.

RGIS respectfully submits that it is entitled to a summary decision now in its favor based on the well established law of this Circuit. If the NLRB later wishes to challenge that decision, it may petition this Court for rehearing en banc yet again or petition the Supreme Court.

Accordingly, RGIS respectfully moves the Court to grant its Motion for Summary Decision, summarily granting its Petition for Review and denying the NLRB's Cross-Application for Enforcement

based on this Court's decisions in *D.R. Horton, Murphy Oil*, and *Chesapeake Energy*.

Dated: July 5, 2016

Respectfully submitted,

s/ Ron Chapman Jr.
Ron Chapman, Jr.
Ogletree, Deakins, Nash, Smoak
& Stewart, P.C.
8117 Preston Road – Suite 500
Dallas, TX 75225
Telephone: 214-987-3800
Facsimile: 214-987-3927
ron.chapman@ogletreedeakins.com

Christopher C. Murray
Ogletree, Deakins, Nash, Smoak
& Stewart, P.C.
111 Monument Circle, Suite 4600
Indianapolis, IN 46204
Telephone: 317-916-1300
Facsimile: 317-916-9076
christopher.murray @ ogletreedeakins.com

Attorneys for RGIS

CERTIFICATE OF SERVICE

I certify that on this 5th day of July, 2016, I caused this PETITIONER/CROSS-RESPONDENT RGIS, LLC'S REPLY IN SUPPORT OF ITS MOTION FOR SUMMARY DECISION to be filed electronically with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to all registered CM/ECF users.

s/Ron Chapman, Jr.

25350192.1